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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

JERRY ADAMS, Pro Se,

Petitioner,

v.

CITY OF SUFFOLK, VIRGINIA, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether Congress intended to protect the public from drunk drivers when they enacted the Surface Transportation Extension Act of 2004 by arresting and prosecuting drunk drivers that has committed a vehicular felony?

(2) Should the Rule of Law apply to every Police and Prosecutor of all cities within the jurisdiction of the United States?

(3) Whether it is a policy violation when the head of all departments of any city within the jurisdiction of the United States of America has failed to arrest, cause the arrest or prosecute an admitted felon and drunk driver with probable cause of taking the life of any Citizen of the United States?

(4) Should the Police, Prosecutor, City Manager and Mayor be allowed to enter into a conspiracy to conceal evidence and protect a felon?

(5) Whether it was Congress' intentions by enacting the First Amendment to insure Freedom of Speech and Fourteenth Amendment to insure equal protection and due process of law?

(6) Whether it was Congress' intentions for federal employees to uphold their Constitutional oath and Code of Ethics when it enacted the same?

PARTIES TO THE PROCEEDINGS

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgement is the subject of this petition is as follows:

Petitioner

Jerry Adams

Respondents

C. Phillips Ferguson in his individual/official capacity as Commonwealth Attorney; City of Suffolk, Virginia; Chief William Freeman in his individual/official capacity; Chief of Police One in his individual/official capacity; Captain One in his individual/official capacity; City Manager One in his individual/official capacity; Delegate Chris Jones in his individual/official capacity as Mayor for the City of Suffolk.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jerry Adams, prays that a Writ of Certiorari issue to review the judgment of the Richmond, Virginia Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit was decided March 14, 2006, and is unreported. It is attached in the Appendix at App. 1. The dismissal order of the United States District Court for the Eastern District of Virginia, Norfolk Division, was filed October 27, 2005, and is unreported. App. 4. The final order of the United States District Court for the Eastern District of Virginia, Norfolk Division, is unreported and was filed November 1, 2005. App. 15.

STATEMENT OF JURISDICTION

The denial of rehearing of the Court of Appeals (En Banc) for the Fourth Circuit, Richmond, Virginia was filed on May 2, 2006. This Great Court has JURISDICTION of this case per 28 U.S.C. § 1254(1).

CONSTITUTIONAL ISSUES

First Amendment to the Constitution of the United States:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . .

There is no doubt that Congress intended to allow American Citizens the right to address their city council concerning a police mistake.

Mayor Chris Jones did stop me from addressing council when I was on the agenda and being polite. He called my home and notified me that he would stop me from speaking if I came before council to speak.

Fourteenth Amendment to the Constitution of the United States:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Justice in the death of a family member, when justice is available is a right guaranteed by the Fourteenth Amendment. From the evidence and the Respondents intent, all Respondents entered into a conspiracy to conceal a simple police mistake concerning the angle my son had departed the highway.

The intentions of the Respondents are further expressed by their failure to arrest a felon, (fleeing the scene of an accident) and drunk driver with probable cause of a felony, involuntary manslaughter of my son, as part of their intentions to further their conspiracy.

The passenger in Rodger Bradshaw's truck, Brian Miller, specified on the official police report that Rodger Bradshaw left the scene of the accident of my late son and there was no one at the scene when he left the scene of the accident of Jerry Adams, Jr.

Rodger Bradshaw's truck was seen racing towards my son at a very high rate of speed. The car he was racing was found at his passengers house. This car matched the description given by Jousa Stice including color and tinted windows.

The family of Jerry Adams, Jr., was denied Due Process of Law because we could not bring any legal action against Rodger Bradshaw for the simple reason the police and prosecutor covered and concealed the mistake with the angle of departure that my late son departed the highway.

Without an acute angle of departure, as in an evasive action, there is no cause of action. This is the basis of the Respondents continuing concealment and continuing conspiracy to conceal their mistake. *Bivens v. Six Narcotics Agents*, 403 U.S. 388 (1971).

PRELIMINARY STATEMENT

1. Petitioner, Jerry Adams is a citizen of the United States and a resident of the City of Suffolk, Virginia.

2. The Petitioner is employed by the Department of Navy and has sworn the Oath to uphold the Constitution of the United States of America.

3. The main purpose of this litigation is to uphold what so many men have died for, what so many family members have cried for, the Constitution of the United States of America.

4. The second main purpose of this litigation is to expose the continuing corruption and continuing conspiracy

inflicted upon my family and self by members of the Suffolk Police Department and Commonwealth Attorneys office while denying my family and self, Justice in the death of our only son.

5. The District Court and Court of Appeals erred in dismissing this case citing Res Judicata, and the *Rooker-Feldman* Doctrine. The Supreme Court ruled that the *Rooker-Feldman* Doctrine is statutory (based on Certiorari Jurisdiction Statute, 28 U.S.C. § 1257). *Exxon Mobil Corp. v. Saudi Basic Industries Corporation*, 544 U.S. 280 (2005).

6. The proceedings were started in the Federal District Court as a civil case. Having no success in federal court, the Petitioner filed a quo warranto and a Mandamus to compel the elected Commonwealth Attorney to arrest an admitted felon and drunk driver. A Mandamus is not a civil action. This negates the *Rooker-Feldman* dismissal. *Lance v. Dennis*, 546 U.S. ___, ___ (2006) (this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction). *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003).

7. The Petitioner specifically pled Fraudulent Concealment and a *Grave Miscarriage of Justice* in the death of his son and *A Grave Miscarriage of Justice* in the violation of the Petitioner's Constitutional rights by the Defendants. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). *Fraud whether intrinsic or extrinsic or misrepresentation by the other party the judgment is void. United States v. Beggerly*, 524 U.S. 38 (1998). This eliminated Res Judicata.

8. The Court of Appeals and District Court's *ruling was an Abuse of Discretion. The record contains no evidence to support its decision. M.G.I.C. v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991).

9. The Petitioner furnished Conclusive Evidence through Exhibits (1) through (25)[1] and submitted to the Courts four U.S. Supreme Court precedences citing "Fraudulent Concealment" which eliminates Res Judicata and tolls the Statute of Limitations. *United States v. Beggerly*, 524 U.S. 38 (1998); *United States v. Polites*, 364 U.S. 426 (1960); *United States v Ness*, 245 U.S. 318 (1917); *Knauer v. United States*, 328 U.S. 654 (1946).

10. The Respondents did not furnish any evidence as a rebuttal. This is because they have none.

11. The Court of Appeals and District Court further erred by not allowing a Pro Se Litigant Leave of the Court to Amend his Pleading when Constitutional issues are presented. *"A Pro Se litigant must be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

12. *"In exercising its discretion, a court must be guided by the underlying purpose of Rule 15 – to facilitate decision on the merits rather than the pleadings or technicalities." United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1973).

13. *"The issues of fact must be decided after and not before the court has assumed jurisdiction." Bell v. Hood*, 327 U.S. 678 (1946).

14. The court of Appeals and District Court further erred by dismissing this case because the evidence shows *"the Court's decision was Arbitrary and Capricious because there was an absence of a rational connection between the*

[1] The Exhibits were admitted in the United States District Court, Eastern District of Virginia, Norfolk Division.

facts shown and the choice made." Natural Resources v. U.S., 966 F.2d 1292, 1297 (9th Cir. 1987). The Petitioner has not in any prior litigation pled Fraudulent Concealment. As a matter of fact, the Petitioner has not had a chance to read law until 2005 due to the enormous overtime imposed on me by the United States Government.

15. Due to the reduction in overtime because of budget concerns of the U.S. Government, it has given the Petitioner time to read law.

16. The Petitioner has not in any Court had a chance to litigate his case.

17. This case comes before this Great Court as a Constitutional Rights violation by members of the agencies that are sworn to uphold the Constitution of the United States of America. This case has violations of individual rights as outlined in the Constitution.

18. Congress was very specific when they enacted 42 U.S.C. §§ 1983-1985.

STATEMENT OF THE CASE

19. On January 12, 1992, at 4:42 a.m., Petitioner's son was forced off the road by two approaching vehicles racing, which resulted in his death. These two vehicles matched the description of Rodger Bradshaw's truck and the other found at his passenger's house, including tinted windows.

20. Petitioner's son's vehicle exited the highway at an acute angle of (21) degrees, indicative of an evasive action to prevent a head-on collision.

21. Petitioner's son died without regaining consciousness on January 12, 1992 (as a result of this evasive action) at Norfolk General Hospital.

22. On June 9, 1992, Petitioner, his attorney and witnesses, at 7:00 p.m. met with members of the Suffolk Police Department at the Suffolk Police Department Headquarters, for the purpose of correcting on the police report the angle of departure of the vehicle driven by Jerry Adams, Jr., to no avail.

23. During the above meeting, Captain Sandy Chapman specified that Jerry Adams, Jr., departed the highway at a gradual angle of 6 degrees (indicative of falling asleep) and that there was a vehicle in very close proximity meeting him, but he didn't care what the video showed. *Williams v. United States*, 341 U.S. 97, 99-100 (1951).

24. There can be but one conclusion from this meeting and that was Captain Chapman willfully and deliberately had a specific intent to conceal Officer McKenzie's mistake with the angle of departure of Jerry Adams, Jr. There is an audiotape of this meeting, with Captain Chapman's permission to tape the meeting recorded on the audiotape. Exhibit (2), *Anderson v. United States*, 417 U.S. 211, 223-26 (1974).

25. Petitioner contends all Respondents are and have willfully, deliberately and maliciously misrepresented material facts and willfully, maliciously with willful and specific intent to purposely and fraudulently conceal information concerning the cause of action (angle of departure and a felony) in the accident of Jerry Adams, Jr.

26. Each of the Respondents caused and is legally responsible for their unlawful conduct of Virginia Code

18.2-462, 18.2-460 and 18.2-469. *Ellis v. United States*, 206 U.S. 246 (1907). *Davis v. Scherer*, 468 U.S. 183, 191 (1984).

27. The Petitioner went through the entire Suffolk Police Department and city government to correct the discrepancy with the angle of departure. I showed the video of the accident to the City Manager Richard Hedrick and Chief of Police G.F. Jackson as per letter dated October 22, 1992, but to no avail.

28. There can be but one conclusion from this meeting, Chief Jackson and City Manager Richard Hedrick appear to have willfully and deliberately entered into the continuing conspiracy and had specific intent to fraudulently conceal the mistake with the angle of departure of the vehicle driven by Jerry Adams, Jr.

29. These individuals set the policy and practice of the Suffolk Police Department. Exhibit (15). *United States v. Beggerly*, 524 U.S. 38 (1998); *Owen v. City of Independence*, 445 U.S. 622 (1980).

30. The Petitioner had to do the investigation concerning the death of his son and locate all witnesses and the perpetrator, Rodger Bradshaw.

31. This investigation by the Petitioner required several years to locate Rodger Bradshaw and all other witnesses.

32. The Petitioner could not get anyone in the Suffolk Police Department to question Rodger Bradshaw.

33. On or about July 10, 1993, the Petitioner appeared before Suffolk City Council for the purpose of (1) speaking on Police Procedures and (2) having someone in the police department question Rodger Bradshaw.

34. Mayor Chris Jones willfully, intentionally and purposely stopped the Petitioner from speaking after speaking 4 words of respect. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

35. The Petitioner's speech was in conformance with the Cohen test. Mayor Chris Jones stepped outside of his legislative capacity and apparently joined the continuing concealment and continuing conspiracy.

36. It is a fundamental First Amendment right to air grievances to city council as long as you are on the agenda and being courteous.

37. The Petitioner was being courteous and polite and on the agenda to speak.

38. Mayor Chris Jones called the Petitioner's home and notified the Petitioner that he would stop me from speaking if I came before City Council to speak.

39. As such he held no immunity because he stepped outside the legislative capacity and he is liable per 1983 requirements since he bluntly with malice and intent violated the Petitioner's First Amendment right to the Constitution of the United States and entered into a conspiracy to conceal this mistake. *Wood v. Strickland*, 420 U.S. 308 (1975).

40. The Suffolk Police Department, Officer McKenzie and Major Freeman finally questioned Rodger Bradshaw as per police report dated May 3, [illegible]. They did not specify that Rodger Bradshaw lied to Officer McKenzie and Major Freeman as to the name of his passenger, Brian Miller.

41. Obviously this was an attempt by Rodger Bradshaw to prevent the police from questioning his passenger, Brian Miller.

42. Rodger Bradshaw specified his passenger's name was Tim Ogden or Hodgen and he could not pronounce his last name even though his passenger's name was and is Brian Miller. Rodger Bradshaw had been dating his sister.

43. Rodger Bradshaw also specified that he and his passenger drove to the stop sign at Route 10 and Harrells Drive and sat there for about an hour yet he wasn't at the scene when the police arrived. App. 27.

44. This confirms the Doyle's statement where the Doyles reported they heard the accident, went to their door, saw the truck (Rodger Bradshaw) that had been meeting Jerry Adams, Jr., traveling southbound, slowing to make the 911 call.

45. The Doyles then walked to Route 10 (10 seconds to egress), while the driver was making the 911 call. They didn't see anything, walked back to their house to retrieve their coats, and went back to the road and looked north and positively identified the truck of Rodger Bradshaw parked at the intersection of Harrells Drive and Route 10.

46. Henry Flythe, the paper carrier before turning onto Harrells Drive, had seen this truck coming back from the direction of making the 911 call, traveling very slow in a 55 mph speed zone.

47. When Henry Flythe, the paper carrier turned onto Harrells Drive, he saw from his rear view mirror the same truck back onto Harrells Drive. Exhibit (10).

48. Rodger Bradshaw stated on the police report that he could see the headlights of the truck driven by Jerry Adams, Jr., as it hit the ditch and bounced through the woods while standing on his front porch. App. 28.

49. This was and is impossible due to line of sight obscured by 3 homes, 2 sets of woods and a power easement. Exhibit (10, 3).

50. Rodger Bradshaw, on the official police report, lied to Major Freeman about the address of his passenger and specified that his passenger lived in North Carolina even though his passenger, Brian Miller, lived four miles up the road in Chuckatuck, Virginia. Rodger Bradshaw knew exactly where Brian Miller lived.

51. This was an obvious attempt by Rodger Bradshaw to prevent the police from questioning his passenger, Brian Miller. Exhibit (10).

52. Rodger Bradshaw also specified that he and his 14-year-old passenger had been riding around drinking beer and had consumed a 12 pack and had gone back to the store and purchased another 12 pack of beer. Exhibit (10).

53. Rodger Bradshaw also specified that someone dropped his passenger off at his house driving a stolen car. Exhibit (10).

54. Rodger Bradshaw also lied that he stayed at the intersection of Harrells Drive and Route 10 for about an hour. Exhibit (10).

55. On a police statement given to Captain Freeman on November 6, 1994, Rodger Bradshaw admitted the

previous statement that he gave to the police on May 3, 1994 was a lie, Exhibit (10).

56. Per police statement given by Brian Miller on October 18, 1994, Brian Miller lied that he and Rodger Bradshaw had not been drinking the night of the accident of Jerry Adams, Jr.

57. Brian Miller also lied that he and Rodger Bradshaw were coming out of the front door of Rodger Bradshaw's house when they heard the truck of Jerry Adams, Jr., hit the ditch. Exhibit (10).

58. Brian Miller also specified on the police report that he and Rodger Bradshaw rode by the accident scene heading south towards Suffolk and there was no one at the scene of the accident and they did not stop to render assistance. App. 30-31.

59. This is a class 5 felony. Common sense reasoning is that when two young men come upon an accident of this sort, they will stop to see what has happened, yet Rodger Bradshaw failed to stop out of curiosity and there can be only one reason for his failure to stop. The evidence per a witness shows Rodger Bradshaw ran Jerry Adams, Jr.'s vehicle off the road causing his death. *Butz v. Economou*, 438 U.S. 478, 489 (1978).

60. A truck matching Bradshaw's truck and the car, with tinted windows, found at his passenger's house were seen racing towards Jerry Adams, Jr., at a very high speed. Exhibit (11).

61. Since all of this information is recorded on the official police report, Chief Freeman failed to arrest Rodger Bradshaw for a felony and drunk driving. *Butz v. Economou*, 438 U.S. 478, 489 (1978).

62. With virtually no traffic on Route 10, a 2-lane highway and a 55-mph speed limit, at approximately 0440 on January 12, 1992, Jousa Stice, a paramedic in the U.S. Coast guard, was traveling southbound at 55 mph.

63. Jousa Stice stated on the police report, two vehicles also southbound buzzed by him like he was sitting still. They were racing towards Jerry Adams, Jr.

64. Per the description given by Jousa Stice, these two vehicles matched Rodger Bradshaw's truck and the car found at his passenger (Brian Miller's) house, including color and tinted windows. Exhibit (9).

65. Rodger Bradshaw and an unknown driver were racing towards the Plaintiff's son, Jerry Adams, Jr., who was northbound and the evidence shows these vehicles forced Jerry Adams, Jr., off the road causing his death.

66. Two competent witnesses, Mrs. Jean Perry and Mr. Wayne Umphlette visited the accident scene the morning of the accident and signed statements that Jerry Adams, Jr., departed the highway at an acute angle. This statement is recorded on exhibits and their signatures are witnessed. Exhibit (4 and 5).

67. The Petitioner qualifies as an expert in the inspection of rubber products, and precision measurements. The Petitioner has attended several schools on these subjects and 40 years of inspecting rubber products on nuclear submarines while employed at Norfolk Naval Shipyard.

68. The Petitioner and Mike Bradley inspected the right front tire on the truck driven by Jerry Adams, Jr.

69. The right front tire on Petitioner's truck was scuffed from acute steering to the left due to a shift of the vehicle's weight to the right and acute steering indicative of an evasive action.

70. There was a one-inch wide scuff mark across the double yellow line and this scuff mark lined up with the slide marks across the 12 foot grass shoulder as the truck driven by Jerry Adams, Jr., slid across the 12 foot grass shoulder.

71. This scuff mark and 21 degree gouge through the ditch bank is documented on 35mm. film. Exhibit (6).

72. With an admission of drunk driving, giving a minor alcoholic beverages and a felony of leaving the scene of an accident by Rodger Bradshaw, with probable cause that Rodger Bradshaw committed a class 5 felony of involuntary manslaughter, Major Freeman did not arrest Rodger Bradshaw. The actions of the police at this point indicates a lack of training and supervision. *United States v. Watson*, 423 U.S. 411, 418 (1976).

73. This shows intent of a conspiracy in an attempt to willfully, intentionally and purposely misrepresent material facts and fraudulently conceal the angle of departure that the Petitioner's late son had taken as a result of an evasive action to prevent a head-on collision with Rodger Bradshaw. *Nash v. United States*, 229 U.S. 373, 378 (1913).

74. Major Freeman failed to arrest an admitted felon per Virginia State Code 19.2-81 and 46.2-894. As such Major Freeman is guilty of aiding and abetting a felon per Virginia Code 18.2-19, 18.2-460, 18.2-462, 18.2-456. *Alcorta v. Texas*, 355 U.S. 28 (1957); *Anderson v. United*

States, 417 U.S. 211, 223-26 (1974); *Ellis v. United States*, 206 U.S. 246 (1907).

75. This is and was one police officer protecting another police officer since the angle of departure had become a major controversy between the Petitioner and the Suffolk Police Department. *Krulewitch v. United States*, 336 U.S. 440, 442-443 (1949).

76. Because the Petitioner went through the entire Suffolk Police Department and City Government, this indicates a policy; pattern and practice of the Suffolk Virginia Police Department and Suffolk governing authorities since the heads of these departments were the decision-makers per 42 U.S.C. § 14141. *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

77. The Petitioner stood in Rodger Bradshaw's front yard and confirmed the line of sight to the accident scene is and was obscured by three homes, 2 sets of woods and a power easement and Exhibit (3) shows the same.

78. It was not possible for Rodger Bradshaw to see the truck driven by Jerry Adams, Jr., as it hit the ditch bank except while Rodger Bradshaw was racing.

79. The Petitioner gave non-refutable evidence including the video of the angle of departure and a copy of the police reports to Commonwealth Attorney C. Phillips Ferguson to enable him to prosecute Rodger Bradshaw. *United States v. Shaw*, 555 F.2d 1295, 1299 (5th Cir. 1977); *Forrester v. White*, 484 U.S. 219, 229 (1988); *Butz v. Economou*, 438 U.S. 478, 489 (1978).

80. It appears the Commonwealth Attorney C. Phillips Ferguson joined the Suffolk Police Department, in a conspiracy of the fraudulent concealment of evidence

(angle of departure) and a willful, deliberate misrepresentation of material facts and violated Petitioner's Constitutional rights. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *Berger v. United States*, 295 U.S. 78 (1935); *Napque v. Illinois*, 360 U.S. 264 (1959).

81. His primary duty is to prosecute all felons and drunk drivers in the State of Virginia. *Buckley v. Fitzsimmons*, 509 U.S. 273 (1993); *Kyles v. Whitley*, 514 U.S. 419 (1995).

82. It appears C. Phillips Ferguson aided and abetted an admitted felon per Virginia Code per 18.2-19 by failure to prosecute Rodger Bradshaw per Virginia State Code 46.2.894 and 19.2-81. *Imbler v. Patchman*, 424 U.S. 409, 410 (1976); *Buckley v. Fitzsimmons*, 509 U.S. 273 (1993); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1981); *Davis v. Scherer*, 468 U.S. 183, 191 (1984).

83. For these reasons, C. Phillips Ferguson is not entitled to Absolute Immunity because he violated the Petitioner's Constitutional right to due process and equal protection under law and broke the law as per Code 18.2-462, 18.2-460, 18.2-469 and 18.2-456. *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943); *United States v. Falcone*, 311 U.S. 205, 210 (1940); *Butz v. Economou*, 438 U.S. 478, 489 (1978).

84. The Commonwealth Attorney is given a block grant of money yearly by the United States Government to prosecute drunk drivers. Instead he has let an admitted drunk driver and felon endanger the public. As such, he stepped outside of a prosecutorial function. This indicates a policy, practice and pattern since C. Phillips Ferguson is the decision-maker. *Alcorta v. Texas*, 355 U.S. 28 (1957);

Berger v. United States, 295 U.S. 78 (1935); *Spurr v. United States*, 174 U.S. 728 (1899).

85. Per letter dated May 5, 1997 the Petitioner received the records from the Suffolk Police Department of the accident of Jerry Adams, Jr., per the Freedom of Information Act. The first request per the Freedom of Information Act was denied by the Suffolk Police Department.

86. On or about February 26, 1999 the Petitioner Pro Se filed a First and Fourteenth Amendment suit against the City of Suffolk and the State of Virginia in federal court. Case number 2:99cv293, Dismissed without litigating.

87. On or about March 29, 2001, the Petitioner filed Pro Se, a quo warranto against the Commonwealth Attorney to force him to prosecute this admitted felon. The case was dismissed citing res judicata and the Petitioner was not allowed Discovery.

88. On or about January 29, 2004, the Petitioner filed Pro Se, a Mandamus against the Commonwealth Attorney to force him to prosecute this admitted felon. The case was dismissed with prejudice, citing res judicata and the Petitioner was not allowed Discovery. Case number CL04-25.

89. During this case Rodger Bradshaw and Brian Miller were served a lawful subpoena during the Mandamus for Discovery but neither showed for court.

90. It appears someone told the witnesses not to show. A compel order and Continuance was submitted to the court of Judge Rodney Delk to force Rodger Bradshaw's and Brian Miller's attendance.

91. After the Petitioner filed a motion for Discovery, Officer McKenzie of the Suffolk Police Department filed a motion to Quash Discovery.

92. This action further shows the extent of the continuing conspiracy by the agencies and people who have taken an oath to uphold the Constitution of the United States of America.

93. On or about January 29, 2004 the Petitioner filed a petition to the Clerk of court with 227 registered voter's signatures requesting a Grand Jury pursuant to Virginia Code 48.1 to inquire in the accident of Jerry Adams, Jr., case no. Cl 04-25.

94. Even though a felony had been committed and a drunk was allowed to endanger the public, the Petition was Denied by the Court.

95. It appears very obvious the deliberate and willful specific intent of all the Respondents in Law Enforcement, and Mayor Jones was to fraudulently conceal the mistake with the angle of departure of Jerry Adams, Jr.

96. The Petitioner specifies that he has diligently pursued the cause of aetion in this case because of my duty to my family and my oath to the Constitution and Federal code of Ethics.

97. To allow this grave miscarriage of injustice entices further corruption of our law enforcement agencies. Our form of government will not stand and it will implode from within if a continuation of this policy is allowed. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

98. The Petitioner contends the Respondents have a continuing duty to uphold the laws of Virginia and the Constitution of the United States. Due to continuing negligence, fraudulent concealment and continuing conspiracy on the Respondents part, a court action can be brought against the Respondents as long as they fail to perform their continuing duty. *Adler v. Beverly Hills Hospital*, 594 S.W.2d 153 (Tex. Civ. App. – Dallas 1980).

99. If a driver drifts off the road at a gradual angle of 6 degrees, this is indicative of being asleep. If the driver leaves the highway at 10 degrees or greater at 55 mph, this is indicative of an evasive action.

100. The Petitioner's late son departed the highway at 21 degrees at 55 mph as substantiated by the evidence. Two vehicles matching Rodger Bradshaw's truck and the Dodge Colt with tinted windows found at his passenger's house were seen racing towards the Petitioner's late son's vehicle seconds before Jerry Adams, Jr., departed the highway with an evasive action in order to prevent a head-on collision with Rodger Bradshaw.

101. Without an acute angle you have no evasive action. That is why the angle is very important to this case.

102. It appears by their intent that all Respondents entered into a conspiracy and breached their sworn duty by being negligent and fraudulent by concealing their mistake with the angle of departure and failed to arrest an admitted felon and drunk driver with probable cause of involuntary manslaughter. *Owen v. City of Independence*, 445 U.S. 622 (1980).

103. Because of the continuing negligence and continuing conspiracy of the Respondents to perform the continuing requirements of their jobs, the Petitioner has endured a tremendous lack of peace of mind and suffering. *Two Pesos, Inc. v. Gulf Insurance Co.*, 901 S.W.2d 495 (Texas App. – Houston [14th Dist.] 1995) (no writ); *United States v. Classic*, 313 U.S. 299, 326 (1941).

104. Due to the relaxation of overtime by the Petitioner's employer, the United States Government, Department of the Navy at Norfolk Naval Shipyard, the Petitioner specifies that until January 2005, I did not understand what cause of action means let alone how to apply it.

105. The Petitioner further specifies that this reduction in overtime has given me time to read law and case law and understand what cause of action means and how to apply a cause of action. Petitioner specifies he could not retain a lawyer after many searches for a lawyer.

106. The Petitioner further specifies, unless he has a cause of action without the knowledge of a cause of action or how to apply the cause of action, he has no cause of action.

107. Petitioner specifies, he has diligently sought a cause of action because he has a sworn oath to uphold.

108. Petitioner specifies because of fraudulent concealment, continuing conspiracy, negligence and willful Misrepresentation of Material Facts by the Respondents the cause of action has not been uncovered.

109. The Petitioner further contends, if the fraudulent concealment and the Willful Misrepresentation of Material Facts had been uncovered, the police agencies

would have arrested Rodger Bradshaw since he admitted to committing a felony and drunk driving with probable cause of involuntary manslaughter on the official police report.

110. The Petitioner specifies since the Respondents are representatives of local and state Governments, he could not uncover the Respondent's continuing conspiracy, fraudulent concealment and Willful Misrepresentation of Material Facts or cause of action. *Computer Associates Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (1966). The Petitioner contends that is the duty of a jury.

111. Because of the unlawful actions and dereliction of duties by the Respondents, the Petitioner has endured pain and agony, suffering, depression, lack of concentration, loss of sleep, memory loss, embarrassment, humiliation, loss of self-esteem, extreme fear, loss of thousands of hours to perform duties neglected by law enforcement agencies, loss of many hours to study and read law, damage to the Petitioner's reputation, loss of confidence in our judicial system, loss of justice for the death of his son, loss of Petitioner's Constitutional and Civil Rights.

112. The Petitioner requests this court to uphold the Constitution and at its discretion award punitive and civil damages as it determines.

113. The Petitioner specifies that there has been a ***grave miscarriage of justice*** in the death of his late son. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

114. The Petitioner specifies there has been a ***grave miscarriage of justice*** in the violation of the Petitioner's

Constitutional Rights. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

REASONS TO GRANT CERTIORARI

This case was dismissed per res judicata and *Rooker-Feldman* Doctrine. This case is unique because an extensive search of case law revealed no other cases using the *Rooker-Feldman* doctrine as a defense when fraudulent concealment is pled by the Petitioner.

(1) The following Authorities have specifically stated ***Fraudulent Concealment eliminates res judicata*** yet the District Court and Court of Appeals dismissed citing res judicata and the *Rooker-Feldman* Doctrine. Their decision is in direct conflict with the following authorities of this Great Court.

(a) *Knauer v. United States*, 328 U.S. 654 (1946)

(b) *United States v. Beggerly*, 524 U.S. 38 (1998)

(c) *United States v. Ness*, 245 U.S. 318 (1917)

(d) *United States v. Polites*, 364 U.S. 426 (1960)

(e) *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005)

The record shows this case commenced first in the Federal District Court.

(2) The following authorities have specified that ***Fraudulent Concealment tolls the statute of limitations but the Plaintiff must use due diligence in search of the cause of action***.

(a) *Holmberg v. Ambrech*, 327 U.S. 392 (1946)

(b) *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346, 347 (1874)

The Petitioner has performed this investigation and read law while performing mandatory commitments to my home and job. In addition, I have been required to work 500 to 800 hours of overtime yearly in the defense of our great Country.

In attempting to bring justice in the death of my son and vindication of my Constitutional Rights has required all of the time that I could muster. I could not obtain a lawyer that was even interested in the case.

The Fourth Circuit's decision is in direct conflict with the above decisions of this Court.

(3) The following Authorities have specified, ***when an attorney commits malpractice in the prosecution or defense of a case, The Statute of Limitations is tolled until all litigation is finally concluded.***

(a) *Apex Towing Co. v. Tolin*, 41 S.W.3d 118, 119 (Tex. 2001)

(b) *Hughes v. Mahaney & Higgins*, 821 S.W.2d 154, 157 (Tex. 1991)

The Petitioner has furnished conclusive evidence through Exhibits 1 through 25 that the Commonwealth Attorney, C. Phillips Ferguson misused his authority by failure to prosecute an admitted felon and drunk driver. Therefore he endangered the traveling public which is a policy violation. In addition he has violated the Petitioner's Fourteenth Amendment of Equal Protection and Due Process of Law while entering into a conspiracy with

members of the Suffolk, Virginia Police Department as shown by his intentions.

(4) The following authority specifies in cases of a ***Grave Miscarriage of Justice or tampering with the administration of justice demands a departure of the Doctrine of Res Judicata***.

(a) *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)

The Petitioner has specifically proved by Exhibits 1 through 25 that the Respondents have violated the Petitioner's Freedom of Speech, First and Fourteenth Amendment rights of Due Process by failure to arrest and prosecute an admitted drunk driver and felon with more than probable cause of a class 5 felony of involuntary manslaughter of my son.

Furthermore, as judged by the Respondents' intentions, shows the Respondents have entered into a continuing conspiracy to conceal the primary factor for the cause of action, i.e., the acute angle my late son departed the highway. Since my late son was forced off the highway at an acute angle of departure, the angle of departure would be a prerequisite for any litigation. Without the acute angle there would be no litigation.

There is no doubt that there has been a grave miscarriage of justice in the death of my son and Constitutional Rights. The decision of the Fourth Circuit is again in direct conflict with this Great Court's authority.

(5) The following authority specifies, ***Equal Protection Principles apply to the enforcement of criminal laws***.

(a) *Skinner v. Oklahoma*, 316 U.S. 535 (1942)

The Petitioner has proved by the Respondents' intentions and by Exhibits 1 through 25 members of the Suffolk Police Department and the Commonwealth Attorney have entered into a conspiracy.

Their failure to arrest and prosecute an admitted drunk drive and felon with probable cause of involuntary manslaughter of my son is a further reflection of their intentions. There was and is no *Equal Protection* or *Due Process of Law*!

The Court of Appeals for the Fourth Circuit has decided once again in conflict of the decisions of this Great Court.

(6) The primary question to ask this Great Court, *Were the police and prosecutor acting as a Minister and Advocate?*

Anytime the police and prosecutor fail to arrest and prosecute an admitted drunk driver and felon, they have plainly broken the law. Their actions go against the following decision of this Court.

(a) *Buckley v. Fitzsimmons*, 509 U.S. 273 (1993)

The many Decisions of our Courts are a reflection and a directive of our judicial system. These decisions have been made by the top judges of our country who are wise in the understanding of the requirements of maintaining a democratic form of government.

To withhold the Constitutional Rights of any American citizen undermines and erodes the foundation of the Constitution. As an American citizen, one would have to examine the condition of that foundation.

Like the foundation of any thing such as a home, dam, skyscraper or high rise gradual erosion will eventually cause it to collapse.

Like the foundation of our monetary system or our home budget, gradual erosion of America's income or our home will cause a failure of our ability to function.

Each American has a duty to the Constitution. The Petitioner, having sworn an oath to uphold the Constitution is under an affirmative duty to do the same.

No American should have to endure what my family and I have endured because of police and prosecutor misconduct.

(7) To allow the police and prosecutor to deliberately break the law and enter into a conspiracy to do the same goes against the following precedence that this Court has very wisely decided against.

(a) *Butz v. Economou*, 438 U.S. 478, 508 (1978)

(b) *United States v. Jannotti*, 673 F.2d 578, 614 (3rd Cir. 1982)

(c) *United States v. Lee*, 106 U.S. 196, 1 S.Ct. 240 (1882)

(d) *Buckley v. Fitzsimmons*, 509 U.S. 273 (1993)

(e) *Berger v. United States*, 295 U.S. 78 (1935)

(f) *Brady v. Maryland*, 373 U.S. 83 (1963)

(8) In addition, Congress and this Court understood the relationship between a local government and its duty to its citizens when it enacted 42 U.S.C. § 14141, policy and practice violation.

For the department heads of the City of Suffolk, Virginia including the prosecutor, chief of police and city manager to allow an admitted felon and drunk driver with probable cause of involuntary manslaughter to go free without an arrest for the same goes directly against public policy and the safety of the traveling public.

(a) *Owen v. City of Independence*, 445 U.S. 622 (1980)

(9) The department heads' actions and intentions further show a conspiracy as ruled on by this Court in the following precedence.

(a) *Direct Sales Co. v. United States*, 319 U.S. 703, 714 (1943).

(10) Furthermore, all of the Respondents broke the Law as an Accessory After the Fact when they failed to arrest or prosecute an admitted felon and drunk driver as this Court ruled in the following precedence.

(a) *Ellis v. United States*, 206 U.S. 246 (1907)

(11) This case was started in Federal District Court as a Civil Rights Violation (pro se) it was not litigated in 1999.

A Quo Warranto and a Mandamus were filed in the State Court to force the commonwealth attorney to perform his mandatory function to prosecute felons. These are not Civil Actions.

In 2005, the 1999 case was brought to Federal District specifically charging Fraudulent Concealment after the Pro Se Petitioner read and studied law.

(12) Congress further amplified this commitment to the traveling public by enacting the Surface Transportation Extension Act of 2004 by providing $30,000,000 to $50,000,000 for the states yearly in order to combat drunk drivers and the loss of 50,000 American lives and the maiming and injuries to 200,000 American Citizens. Failure to grant this Certiorari sends a signal to all prosecutors and police officers that it is okay to violate a constituent's Constitutional Rights, that it is okay to forget about law and order and justice. Our great country will eventually collapse from within if a continuation of this policy is allowed.

To have to do an investigation in the death of one's only son only to have the police and prosecutor conceal evidence and allow the person that took the life of one's son to go scott free is cruel and unlawful because we are dependent on these services. This is the basis for a civilized society.

Anyone with an ability to analyze this situation should quickly determine that the police and prosecutor are worse than the culprit. The culprit made a mistake. What is the excuse of those that have taken an oath and are paid to uphold that oath?

Therefore, failure to grant this Certiorari will further erode the (foundation) rights of the American people as a whole.

We must diligently guard against this horrendous form of misconduct and gradual erosion of citizen rights in order to protect America, its ability to function as a democratic form of government and its people.

OATH

"I certify under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2006 /s/ Jerry Adams."

Petitioner is a Senior Subsafe Inspector on nuclear submarines that operate out of Norfolk, Virginia. He has been so employed for approximately forty years.

In the end I have won because I have upheld my oath to the Constitution and what has been given for it plus my duty to my family to the best of my ability, so help me God. It is finished. Lord, now grant me peace of mind.

PRAYER

The Petitioner prays that this Great Court will grant relief according to the laws of the United States of America.

Respectfully submitted,

JERRY ADAMS
315 Sussex Court
Suffolk, Virginia 23434
Cell 757-338-0632
Home 757-539-2061

Dated: June, 2006

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-2231

JERRY ADAMS,

Plaintiff-Appellant,

versus

CHRIS JONES, Delegate, in his Official Capacity as Mayor for the City of Suffolk, Virginia; CITY OF SUFFOLK, VIRGINIA; W. Freeman, in his Official Capacity as Chief of Police for the City of Suffolk, Virginia; CHIEF OF POLICE ONE, in his Official Capacity as Chief of Police for the City of Suffolk, Virginia; C. PHILLIPS FERGUSON, in his Official Capacity as Commonwealth Attorney for the City of Suffolk, Virginia; DAVE MCALLISTER, in his Official Capacity as Head of Virginia State Crash Team; CAPTAIN ONE, in his Official Capacity as Captain of the Suffolk Police Department; RODHAM T. DELK, JR., Judge, in his Official Capacity as Judge for the Circuit Court of Suffolk, Virginia; CITY MANAGER ONE, in his Official Capacity as City Manager of the City of Suffolk, Virginia,

Defendants-Appellees,

and

SERGEANT ONE, in his Official Capacity as a Virginia State Policeman,

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CA-05-434-2).

Submitted: February 17, 2006 Decided: March 14, 2006

Before NIEMEYER, LUTTIG, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jerry Adams, Appellant Pro Se. Anthony Charles Williams, OFFICE OF THE CITY ATTORNEY, Suffolk, Virginia; Christopher Ambrosio, Lisa Lieberman Thatch, VANDEVENTER BLACK, L.L.P., Norfolk, Virginia; Stephen Michael Hall, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Jerry Adams appeals the district court's order denying relief on his 42 U.S.C. § 1983 (2000) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Adams v. Jones,* No. CA-05-434-2 (E.D. Va. Oct. 27,

2005; Nov. 1, 2005). We deny the motions for summary reversal, for discovery, and for sanctions. We also deny the motion for oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JERRY ADAMS,

Plaintiff,

v. ACTION NO. 2:05cv434

DELEGATE CHRIS JONES, *et al.*,

Defendants.

DISMISSAL ORDER

(Filed Oct. 27, 2005)

Plaintiff filed this action *pro se* on July 25, 2005, to redress alleged violations of his constitutional rights. This matter comes before the court on defendants' motions to dismiss. For the reasons stated below, the defendants' motions to dismiss are **GRANTED**.

I. Factual and Procedural History

Plaintiff's son, Jerry Adams, Jr., was tragically killed in a car accident on January 12, 1992, in the City of Suffolk. Officer M.W. McKenzie investigated the accident and determined that the vehicle ran off the road for some unknown reason. McKenzie did not find any indication that the decedent's vehicle had come into contact with any other vehicle. McKenzie found a single tire track on the road before the place where the vehicle hit a ditch. According to McKenzie, there were no other tire tracks on the road. After a further search of the accident scene in daylight hours, McKenzie concluded that the incident was a one-car accident.

Since the accident, plaintiff has become convinced that another car was involved in his son's death. At plaintiff's insistence, the police conducted several subsequent reviews of the accident, all of which supported the conclusions reached by Officer McKenzie in his investigation. In addition, in June 1993, the Department of Motor Vehicles ("DMV") Crash Investigation Team met with McKenzie and plaintiff. After reviewing the evidence, the DMV Team concurred with McKenzie's conclusion.

Plaintiff filed this suit *pro se* on July 25, 2005, and on August 9, 2005, plaintiff filed an amended complaint. Plaintiff claims that defendants violated his constitutional rights by inadequately investigating his son's accident, by conspiring to conceal a mistake that McKenzie allegedly made during his original investigation, and by refusing to prosecute the individuals he believes are involved in his son's death. He also claims that defendant Judge Delk violated his rights by dismissing his case in the Circuit Court of Suffolk, Virginia, and that defendant Jones denied him his First Amendment rights by preventing him from speaking at a Suffolk City Council meeting in July, 1993. Plaintiff seeks injunctive relief from the court, as well as an unspecified amount of damages. Plaintiff brought these identical claims in a previous action before this court. *Adams v. City of Suffolk, and State of Virginia,* Action No. 2:99cv293 (E.D.V.A. May 24, 1999). In that previous action, this court granted defendants' motion to dismiss and motion for summary judgment. All defendants in the current case who have been properly served[1] have filed motions to dismiss with briefs in support. Plaintiff

[1] *See* October 24, 2005 order; *see also infra* note 5.

has responded to all of these motions except defendant Ferguson's motion to dismiss.[2] On August 23, 2005, plaintiff filed a motion for summary judgment. All defendants who have been properly served have responded to plaintiff's motion for summary judgment.

On October 4, 2005, plaintiff filed a motion requesting leave of court to again amend his complaint. Plaintiff has already amended his complaint once, and the amendments he now wishes to make to his complaint do not substantively change the dispositive issues in this case. Therefore, plaintiff's October 4, 2005, motion to amend is **DENIED**.

II. Discussion

In construing a motion to dismiss, the facts alleged in plaintiff's *pro se* complaint must be taken as true. *Loe v. Armistead,* 582 F.2d 1291, 1292 (4th Cir. 1978). A *pro se* complaint, no matter how unartfully pleaded, must survive a motion to dismiss under Rule 12(b)(6) for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines v. Kerner,* 404 U.S. 519, 521 (1972) (per curiam). A *pro se* complaint involving civil rights issues should be liberally construed. *Gordon v. Leeke,* 574 F.2d 1147, 1151 (4th Cir. 1978). Dismissal may be appropriate where the complaint contains a detailed description of underlying facts which fail

[2] Defendant Ferguson filed his motion to dismiss on August 23, 2005. In accordance with *Roseboro v. Garrison,* 528 F.2d 309 (4th Cir. 1975) and Local Rule 7(K), plaintiff was provided with notice that he was entitled to file a response opposing this motion and that any response must be filed within twenty (20) days of the date on which the motion to dismiss was filed.

to state a viable claim. *Estelle v. Gamble,* 429 U.S. 97, 106-09 (1976). However, where the complaint is broad, dismissal for failure to state a claim is improper. *Bolding v. Holshouser,* 575 F.2d 461 (4th Cir. 1978). Finally, where a *pro se* complaint contains a potentially cognizable claim, plaintiff should be allowed to particularize the claim. *Coleman v. Peyton,* 340 F.2d 603, 604 (4th Cir. 1965).

Although plaintiff claims that defendants violated a litany of his rights under a variety of different laws, fairly read, plaintiff is bringing a claim under 42 U.S.C. § 1983. He claims that defendants, acting under color of law, violated his Fourteenth Amendment right to due process and his First Amendment right to free speech.

A. Statute of Limitations

Defendants argue that plaintiff's claims are barred by the statute of limitations. Because his son's accident occurred in 1992, plaintiff brought this claim well after the expiration of the two-year statute of limitations. *See Johnson v. Davis,* 582 F.2d 1316, 1319 (4th Cir. 1978) (holding that two-year limitation period applies to § 1983 cases in Virginia). However, plaintiff argues that the conspiracy to violate his constitutional rights is ongoing. Thus, plaintiff is arguing that his rights were continually violated from the time of his son's death to the present. Regardless of the merits of this claim, because plaintiff claims a continuing violation, the court will not dismiss this suit based on the statute of limitations.

B. Jurisdiction Over State Court Actions

Plaintiff claims that defendant Delk, a judge for the Circuit Court of Suffolk, Virginia, violated his constitutional

rights when he dismissed plaintiff's case in that court in July, 2004. A federal court must have subject matter jurisdiction over a lawsuit in order for the court to have the power to award relief. *First Am. Nat'l Bank v. Straight Creek Processing Co.,* 756 F. Supp. 945, 946 (E.D. Va. 1991). If the court does not have subject matter jurisdiction, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3). This court lacks subject matter jurisdiction over this claim, because it is barred by the *Rooker-Feldman* doctrine.

Plaintiff's complaint is an impermissible attempt to appeal the procedures and rulings of the Circuit Court of Suffolk, Virginia, a state court. This is not within the ambit of this court's jurisdiction. *See Exxon Mobil Corp. V. Saudi Basic Ind. Corp.*, ___ U.S. ___, 125 S.Ct. 1517 (2005) (noting that the *Rooker-Feldman* doctrine should only be used when losing parties in state court seek rejection of the state court judgment in federal court); *see also District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 483 (1983) (explaining that a federal district court has no authority to review state court judgments); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-16 (explaining that district courts do not have appellate jurisdiction over state court judgments). As the Court of Appeals for the Fourth Circuit has explained:

> our intrusion into such matters of state court practice and procedure would be highly disruptive of state courts. The state courts are fully capable of managing the processing of their case load, and they should be allowed to do it. If along the way some federally secured right should be violated, the party would have potential access to the Supreme Court of the United States, but our

> intervention would be a serious violation of the principles of federalism and of comity.

Ganey v. Barefoot, 749 F.2d 1124, 1128 (4th Cir. 1984); *see also Leonard v. Suthard,* 927 F.2d 168 (4th Cir. 1991).

Because this court does not have jurisdiction over Virginia state courts, plaintiff's claim against defendant Delk must fail. Accordingly, defendant Delk is **DISMISSED** as a defendant in this action.

C. Res Judicata

The remaining defendants argue that this suit should be dismissed under the doctrine of *res judicata.* Under *res judicata,* or claim preclusion, "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Federated Dep't Stores, Inc. V. Moitie,* 452 U.S. 394, 398 (1981) (reversing a Court of Appeals decision that declined to apply *res judicata* to a claim that was very similar to the claim of a separate successful litigant).

By refusing to allow parties to litigate claims that were or could have been raised in prior judicial proceedings, the doctrine of *res judicata* "encourages reliance on judicial decisions, bars vexatious litigation, and frees the courts to resolve other disputes." *Pueschel v. United States,* 369 F.3d 345, 354 (4th Cir. 2004) (quoting *Brown v. Felsen,* 442 U.S. 127, 131 (1979)) (affirming lower courts finding that plaintiff's Title VII claim was barred by *res judicata* because it could have been litigated in a prior Title VII suit). In order to assert *res judicata,* the claims in the two suits need not be identical. The critical question is whether the claims "arise out of the same transaction or

series of transactions or the same core of operative facts." *Pueschel,* 369 F.3d at 355, (quoting *In re Varat Enters., Inc.,* 81 F.3d 1310, 1316 (4th Cir. 1996)).

A party who wishes to preclude a claim through *res judicata* must satisfy three factors. The party must show that there was: "(1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits." *Pueschel,* 369 F.3d at 354-355 (quoting *Nash County Bd. Of Educ. V. Biltmore Co.,* 640 F.2d 484, 486 (4th Cir. 1981)). All three of these elements are met in this case.

First, this court issued a final judgment on the merits dismissing plaintiff's claims in a memorandum opinion filed May 24, 1999. *Adams v. City of Suffolk, and State of Virginia,* Action No. 2:99cv293 (E.D.V.A. May 24, 1999). In that case, the court dismissed plaintiff's claim against the State of Virginia pursuant to the Eleventh Amendment and, after determining that plaintiff's claims did not state a viable constitutional claim, granted the City of Suffolk's motion for summary judgment.

Second, the claims plaintiff raised in the prior action in this court are identical to the claims he raises in this suit.[3] In both cases, plaintiff claims that defendants violated his constitutional rights by inadequately investigating his son's accident, conspiring to conceal a mistake in the investigation of his son's death, failing to prosecute the individuals he believes were involved in his son's

[3] In the prior proceeding, plaintiff did not raise claims identical to those he now raises against defendant Delk, but defendant Delk has already been dismissed, as explained above.

death, and refusing to allow him to speak at a Suffolk City Council meeting. Furthermore, the claims in the current suit arise out of the same "core of operative facts" as the prior proceeding. *Pueschel,* 369 F.3d at 355. All of plaintiff's claims relate to the handling of the investigation of his son's accident.

Third, there is identity between the parties in the two suits. Jerry Adams was the plaintiff in both cases. In the prior case, the defendants were the City of Suffolk, and the State of Virginia. In this case, plaintiff is again suing the City of Suffolk as well as a variety of employees and affiliates of the City of Suffolk and the Commonwealth of Virginia.[4] For a non-party to be in privity with a party of previous litigation, "the non-party must be 'so identified in interest with a party to former litigation that he represents precisely the same legal right in respect to the subject matter involved.'" *Martin v. American Bancorportion Retirement Plan,* 407 F.3d 643, 651 (4th Cir. 2005) (quoting *Jones v. SEC,* 115 F.3d 1173, 1180 (4th Cir. 1997)). In this case, the parties to the previous and current litigation are both part of the same entity, either the City of Suffolk, or the State of Virginia. In the previous action, the City of Suffolk and the Commonwealth of Virginia defended the actions of the individuals who are now defendants in this case. Plaintiff sued the entity in the previous action, and he is now suing the individuals who

[4] Specifically, defendants in this case are the City of Suffolk, the mayor of the City of Suffolk, four members of the City of Suffolk Police Department, the Commonwealth Attorney for the City of Suffolk, a member of the Virginia State Crash Team, and City Manager of the City of Suffolk. Plaintiff also sues Circuit Court of Suffolk, Virginia Judge Delk, but defendant Delk has already been dismissed, as explained above.

are part of the entity. The parties' legal rights in both actions are precisely identical.

Thus, all factors necessary for the application of *res judicata* are present in this case. Plaintiff may not relitigate claims that were decided in a previous action. The court **GRANTS** the remaining defendants' motions to dismiss. Therefore, defendants Jones, Freeman, Chief of Police One, Ferguson, McAllister, Captain One, City Manager One, and the City of Suffolk are **DISMISSED.** Defendant Sgt. One is not dismissed, but as stated in the court's October 24, 2005 order, the court cannot conclude that he was properly served. This action will proceed as to defendant Sgt. One, if and when plaintiff properly identifies him pursuant to the courts October 24, 2005 orders.[5]

III. Conclusion

In conclusion, plaintiff's claims must fail. This action is **DISMISSED** with prejudice, as to all defendants except Sgt. One. Plaintiff's motion for summary judgment and all other pending motions in this action are **DISMISSED** as moot.[6]

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[5] However, even if plaintiff properly identifies defendant Sgt. One in compliance with this court's October 24, 2005 order, the same *res judicata* preclusion reasoning will apply to plaintiff's claims against Sgt. One.

[6] These dismissed motions include: (1) plaintiff's September 7, 2005, motion to dismiss C. Phillips Ferguson, Dave McAllister, Sgt. One, and Judge Rodney Delk and motion to enjoin Chief W. Freeman; (2) defendant Captain One, City Manager One, Delegate Chris Jones, City of Suffolk, Virginia, Chief W. Freeman, and Chief of Police One's September 20, 2005, motion to dismiss entire case, or in the alternative, motion to deny plaintiff's motion to dismiss C. Phillips Ferguson, Dave McCallister, Sgt. One, and Judge Rodney Delk, and motion to enjoin

(Continued on following page)

Plaintiff has requested that his complaint be sealed.[7] Because there are personal identifiers in the complaint and amended complaint of people both involved and not involved in this litigation, the court will place the complaint and amended complaint under seal pursuant to Local Rule 5. *See* E.D. Va. Loc. R. (5). Accordingly, the Clerk is **ORDERED** to place plaintiff's complaint and amended complaint under seal.

The Clerk is **REQUESTED** to send a copy of this Dismissal Order to plaintiff and counsel for defendants. Plaintiff will be advised of his right to appeal from this dismissal order after all defendants have been finally addressed.[8]

It is so **ORDERED**.

/s/ Rebecca Beach Smith
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

October 27, 2005

Chief W. Freeman; (3) defendant Ferguson's October 12, 2005, motion to strike plaintiff's reply to C. Phillips Ferguson's Response to Motion to Drop Suit.

[7] Said request to seal has been posted on the public docket since July 25, 2005, with no objections thereto. *See* E.D. Va. Loc. R. (5).

[8] *See supra* notes 1 and 5 & accompanying text.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JERRY ADAMS,

Plaintiff,

v. **CASE NO. 2:05cv434**

DELEGATE CHRIS JONES, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

(Filed Oct. 27, 2005)

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by the Court.** This action came for decision by the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motions to dismiss filed by the defendants are **GRANTED**, and this action is **DISMISSED** with prejudice as to all defendants except Sgt. One.

DATED: October 27, 2005

ELIZABETH H. PARET, CLERK

By /s/ Ann F. Rives
Ann F. Rives, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JERRY ADAMS,

Plaintiff,

v. **ACTION NO. 2:05cv434**

DELEGATE CHRIS JONES, *et al.*,

Defendants.

FINAL ORDER

(Filed Nov. 1, 2005)

Plaintiff filed this action *pro se* on July 25, 2005, to redress alleged violations of his constitutional rights. In an order filed October 24, 2005, the court found that it could not conclude that proper service had been made on defendant Sgt. One and ordered plaintiff to identify defendant Sgt. One within fourteen (14) days. On October 27, 2005, the court dismissed all defendants in this case except for defendant Sgt. One. On the same day that this order was filed, plaintiff filed a response to the court's October 24, 2005, order. In this response, plaintiff admitted that defendant Sgt. One has not been properly served. Although plaintiff identifies defendant Sgt. One as Sgt. Robert Powell, he states that Sgt. Robert Powell was "an elderly white haired man" in July 1993, and "[p]laintiff is sure he has retired or passed away." Plaintiff does not provide an address where Sgt. Powell may be found and has not attempted to properly serve him with process.

On October 4, 2005, the court received plaintiff's reply brief to City of Suffolk, Virginia; Delegate Chris Jones; Chief W. Freeman; Chief of Police One; Captain

One; City Manager One; for Opposition to Plaintiff's Motion to Enjoin and Opposition to Plaintiff's Motion to Dismiss Suit Against State Actors.[1] In this brief, plaintiff asked the court to dismiss the state actors because of medical reasons. He explained that he "has been told by a certified doctor that he is dying from a condition that is robbing [p]laintiff's memory which causes some confusion to the plaintiff." (Pl.'s Br. 5). In his October 27, 2005, response to this court's order, plaintiff reiterates his intention to dismiss the state actors in this case including defendant Sgt. One because of his medical condition.

The court **CONSTRUES** plaintiff's request as a motion to dismiss defendant Sgt. One as a defendant in this case. The court **GRANTS** plaintiff's motion to dismiss defendant Sgt. One. Accordingly, defendant Sgt. One is **DISMISSED** as a defendant in this action. Because defendant Sgt. One is the only remaining defendant in this action, this case is **ORDERED DISMISSED** in its entirety.

Plaintiff is advised that he may appeal from this Final Order and the court's Order of October 27, 2005, by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within thirty (30) days from the date of this order.

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[1] On September 7, 2005, plaintiff filed a motion to enjoin Chief W. Freeman and a motion to drop suit against C. Phillips Ferguson, Dave McAllister, Sgt. One, and Judge Rodney Delk. This motion was dismissed as moot in the court's October 27, 2005 order.

The Clerk is **DIRECTED** to send a copy of this Final Order to plaintiff and counsel for defendants.

IT IS SO **ORDERED**.

/s/ Rebecca Beach Smith
UNITED STATES
DISTRICT JUDGE

Norfolk, Virginia

November 1, 2005

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
May 2, 2006

No. 05-2231
CA-05-434-2

JERRY ADAMS

Plaintiff-Appellant

v.

CHRIS JONES, Delegate, in his Official Capacity as Mayor for the City of Suffolk, Virginia; CITY OF SUFFOLK, VIRGINIA; W. FREEMAN, in his Official Capacity as Chief of Police for the City of Suffolk, Virginia; CHIEF OF POLICE ONE, in his Official Capacity as Chief of Police for the City of Suffolk, Virginia; C. PHILLIPS FERGUSON, in his Official Capacity as Commonwealth Attorney for the City of Suffolk, Virginia; DAVE MCALLISTER, in his Official Capacity as Head of Virginia State Crash Team; CAPTAIN ONE, in his Official Capacity as Captain of the Suffolk Police Department; RODHAM T. DELK, JR., Judge, in his Official Capacity as Judge for the Circuit Court of Suffolk, Virginia; CITY MANAGER ONE, in his Official Capacity as City Manager of the City of Suffolk, Virginia

Defendants-Appellees

and

SERGEANT ONE, in his Official Capacity as a Virginia State Policeman

Defendant

On Petition for Rehearing En Banc

The appellant's petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en banc is denied.

Entered for a panel composed of Judge Niemeyer, Judge Luttig, and Judge Traxler.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE CIRCUIT COURT OF SUFFOLK, VIRGINIA
L04-2S

JERRY ADAMS

VS.

PHILLIP FURGUSON

COMMONWEALTH ATTORNEY FOR THE CITY OF SUFFOLK, VIRGINIA

ACTION: MANDAMUS

SUBJECT: AMICUS CURAIE BRIEF

I, JAMES MINARD, RESIDING AT 808 GARDEN LANE, SUFFOLK, VIRGINIA DO RESPECTVLY ASK THE LEAVE OF THIS COURT TO FILE THIS BRIEF [FRIEND OF THE COURT] IN SUPPORT OF JERRY ADAMS.

I AM AN OFFICER OF THE LAW AT THE REGIONAL JAIL SUFFOLK, VIRGINIA.

(1) I DID VISIT THE CRASH SCENE WITH JERRY ADAMS THE DAY OF HIS LATE SONS FUNERAL. IT WAS VERY OBVIOUS THAT HIS SON HAD EXITED THE HIGHWAY AT AN ACUTE ANGLE OF 21 DEGREES. I COULD SEE THE SKID MARKS WHERE THE TRUCK DRIVEN BY JERRY ADAMS JR. SLID ACROSS THE 12 FOOT GRASS SHOULDER AND THE TRUCK IMPACTED THE DITCH BANK.

(2) I DID ATTEND A MEETING WITH JERRY ADAMS AND THE SUFFOLK, VIRGINIA POLICE DEPARTMENT ON 6/9/92 AT THE POLICE HEAD QUARTERS. I DID HEAR CAPTAIN SANDY CHAPMAN STATE THAT [HE DID NOT CARE WHAT THE VIDEO OF THE CRASH SCENE SHOWS, JERRY ADAMS JR.

LEFT THE ROAD AT A GRADUAL ANGLE OF 6 DEGREES.] THAT DOES NOT AGREE WITH WHAT I SAW.

(3) I DID HEAR CAPTAIN SANDY CHAPMAN STATE THERE WAS A VEHICLE IN VERY CLOSE PROXIMITY MEETING JERRY ADAMS JR. WHEN JERRY ADAMS JR. EXITED THE HIGHWAY.

(4) I DID VIEW THE VIDEO OF THE CRASH SCENE MADE BY JERRY ADAMS AND FIND THE VIDEO TO BE A TRUE REPRESENTATION OF WHAT I SAW.

(5) I HAVE SEEN THE POLICE REPORT (AFFIDAVIT 1) STATEMENT OF BRIAN MILLER. BRIAN MILLER (PASSENGER IN RODGER BRADSHAWS TRUCK) STATES RODGER BRADSHAW DROVE PAST THE ACCIDENT SCENE WITH NO OTHER VEHICLES AT THE SCENE TWICE AND DID NOT STOP AT THE SCENE.

BRIAN MILLER ALSO STATES ON THE POLICE REPORT THAT HE COULD NOT SEE THE ACCIDENT SCENE FROM RODGER BRADSHAWS YARD YET ON AFFIDAVIT (2) (SECOND STATEMENT OF RODGER BRADSHAW)

(6) RODGER BRADSHAW ADMITS THAT HE SAW THE TRUCK, DRIVEN BY JERRY ADAMS JR., LIGHTS AS IT FLIPPED AND BOUNCED WHILE STANDING IN HIS YARD. HE FURTHER STATES, THERE WERE SOME PLACES THAT THE TRUCK DRIVEN BY JERRY ADAMS JR. NEVER TOUCHED THE GROUND.

(7) I HAVE VISITED THE YARD OF RODGER BRADSHAW AND FOUND THE LINE OF SIGHT FROM RODGERS BRADSHAWS YARD TO THE ACCIDENT

SCENE TO BE OBSTRUCTED BY 3 HOMES AND A SET OF WOODS.

(8) I HAVE HEARD THE AUDIO TAPE OF JOUSA STICE WHERE HE REPORTS HE WAS TRAVELING SOUTH BOUND AT APPROXAMTLY 55 MPH ON ROUTE 10 THE MORNING OF THE ACCIDENT AND 2 VEHICLES BUZZED BY HIM LIKE HE WAS SITTING STILL. THE TRUCK MATCHED RODGER BRADSHAWS TRUCK.

/s/ James R. Minard
JAMES MINARD
FRIEND OF THE COURT

City/County of Suffolk Commonwealth/ State of Virginia. Sworn to and subscribed before me this 10 day of March, 2004. Witness my hand and official seal.
/s/ Wanda P. Prescott, Notary Public
My commission expires Aug. 31, 2004

App. 23

Report From Accident
Construction EXPERT
Angle 21 degrees
vs
6 degrees as Reported By Police

PROFESSIONAL MATERIAL
DAMAGE CONSULTANTS, INC.

t/a **AUTOMOTIVE ACCIDENT ANALYSIS**
Post Office Box 61945
Virginia Beach, Virginia 23462

Phone (804) 497-6888

May 13, 1993

Mr. Jerry Adams
1529 Whaleyville Blvd.
Suffolk, VA 23434

Dear Mr. Adams;

Pursuant to our telephone conversation this date please find enclosed copies of the accident diagrams.

As you can see on the diagram titled "Vehicle Exit Roadway Diagram"; the tire scuff mark you showed me (Point 1), the arrow you marked on the roadway depicting the tiremarks exiting the roadway (Point 2), and the gouge marks in the ditch bank depicting impact by the vehicle (Point 3). The red line in the diagram depicts the path of travel to connect these points. This line would be at approximately 21 degrees counterclockwise from the normal original path of travel for a northbound vehicle.

I hope this information is of assistance to you. If you have any further questions please don't hesitate to call. I remain

Very truly,

/s/ Steven C. Smith
Steven C. Smith
Consultant

SCS/cls

PROFESSIONAL MATERIAL
DAMAGE CONSULTANTS, INC.

t/a **AUTOMOTIVE ACCIDENT ANALYSIS**
Post Office Box 61945
Virginia Beach, Virginia 23462

Phone (804) 497-6888

STEVEN C. SMITH
PROFILE
JANUARY, 1993

Steve has been a consultant with Professional Material Damage Consultants/Automotive Accident Analysis since 1988. He has also been a member of the Virginia Beach Police Department since 1979. During his tenure as a sworn police officer Steve has worked as a Precinct Patrol Officer and was assigned to the Special Operations Bureau as a Traffic Accident Investigator. Steve is presently a Sergeant with the Virginia Beach Police Department, assigned to the Third Precinct where he supervises a squad of Patrol Officers.

Steve holds a Bachelor of Art Degree in Criminology and has credits towards his Master's Degree in Public Administration.

Steve has an extensive background in traffic accident investigation. His formal training includes: Traffic Accident Reconstruction Training through The Institute Of Police Technology and Management, North Florida University; Vehicle Dynamics through the Traffic Institute, Northwestern University; as well as specialized schools in Pedestrian Accident Reconstruction, Occupant Protection, Motorcycle and Heavy Truck Accident Reconstruction, and Fatal Accident Investigation. In addition to this training, Steve has investigated over two thousand (2,000) traffic accidents.

Steve is a recognized police instructor and has taught classes for the Virginia Department of Criminal Justice Services, the Virginia Division of Motor Vehicles, the U.S. Department of Transportation/ Transportation Safety Institute, the Virginia Alcohol Safety Action Program, the International Association of Chiefs of Police, and is an approved instructor for the Transportation Safety Training Center of Virginia Commonwealth University. Steve also serves as an adjunct instructor for the Institute of Police Technology and Management, University of North Florida.

Steve is a member of several professional organizations, including; the National Association of Professional Accident Reconstructionist, Concerned Citizens Advocating Traffic Safety, the Virginia Beach Safety Council, and serves on the Commonwealth of Virginia "Drug Evaluation and Classification Task Force". He is also a member of Suburban Christian Church.

Steve has been recognized as an expert witness in traffic accident reconstruction in various Virginia Courts.

United States District Court
Eastern District of Virginia
Norfolk Division

Jerry Adams

vs. Case Number 2:99cv293

City of Suffolk Virginia

Reply To Motion to Dismiss by the City of Suffolk, Virginia for Summary Judgement

* * *

Statement of Rodger D Bradshaw, 28 year old white male, as given to Ptl M W McKenzie at Batton's Bay, Carrolton, on 04/22/94 at 2:00 pm, in reference to a traffic fatality which occurred on Godwin Blvd in the City of Suffolk, on 01/12/92 at approximately 4:43 am.

* * *

Q. How long did you sit at the end of Harrell Dr?

A. An hour, maybe 45 minutes.

* * *

Q. How long after the accident did the police arrive?

A. Not long, I'd say 5 to 10 minutes.

Q. One of the witnesses said that he saw your truck parked at the stop sign on Harrell Dr when he was out at the accident scene.

A. I moved my truck from there probably 5 minutes before the crash.

* * *

Statement of Rodger Bradshaw as given to Ptl M. W. KcKenzie and Capt W. A. Freeman in Carrollton on 05/03/94 from 3:30 pm until 4:30 pm in reference to a traffic fatality that occurred on Godwin Blvd. in the City of Suffolk, on 01/12/92 at approximately 4:43 am.

* * *

Q. Do you know the difference in the sound between skidding and sliding?

A. It sounded like he just locked brakes and slid into the ditch, skidding and then a crash. We could tell it flipped because we could see the lights. It flipped and bounced, there were some places that it didn't even touch the ground.

* * *

Q. You could see the lights from your house?

A. From the porch.

* * *

Statement of Roger Dale Bradshaw, W/M, 28, given to Captain W. A. Freeman at the Suffolk Police Department Detective Bureau on November 6, 1994 at 9:30 P.M. in reference to a traffic fatality, which occurred on Rt. 10, Godwin Boulevard, on January 12, 1992 at 4:43 A.M.

* * *

Q. The statement you gave Officer McKenzie and I (WAF) on May 3, 1994 at 3:30 P.M. in reference to the accident on Jan. 12, 1992, was that true?

A. No.

Q. Mr. Bradshaw, why did you lie to Officer McKenzie and I about the accident?

A. I don't know. I am sorry for doing all that.

Q. Mr. Bradshaw, for the third time, tell me what you know about the accident that occurred on Godwin Blvd. on Jan. 12, 1992.

A. I called Brian Miller on the telephone and asked him did he want to go riding. He (Brian) said OK; I went to Chuckatuck to pick him up. I went into the 7-11 Store and bought a twelve pack of Budweiser while he (Brian) was putting his shoes on. Both of us got into the truck, and I drove down Everett's Bridge Road to Autoban Road, Kirk Road, Everett's Road, Moore Farm Lane to Rt. 10 (Godwin Blvd.) to Harrell Drive & Rt. 10. We sat there drinking for about an hour. I drove back to Brian's house, talked to his sister (Joan Miller) for thirty minutes to an hour; then I drove straight home. I parked in the front, got out and walked in the house. I told mom I heard some brakes squealing. He told me he saw some lights flipping through the woods. I told her I'd be right back. I was going to walk to the end of Harrell Drive. I look down the road and changed my mind about going down there and went back home. I listed to the sirens, then went to sleep. The next morning, I drove to Butler's to get a pack of cigarettes. That's when I saw the dirt torn up in the ditch and flat spots in the weeds. Then I went on to work.

* * *

Q. What, if anything, did you see after the accident?

A. I saw headlights through the woods and the steam coming from the front end of the truck. The truck

was upside down on its roof. I walked back to the house then.

* * *

Statement of Brian Dale Miller, 17 year old white male, as given to Ptl M.W. McKenzie at Suffolk Police Headquarters on October 18, 1994 at 1:33 pm in reference to a traffic fatality which occurred on Godwin Blvd. in the City of Suffolk, on January 12, 1992 at approximately 4:40 am.

* * *

Q. Did you and Rodger sit in the truck at the end of Harrell Dr?

A. I think I was, just sitting there.

Q. Before or after the accident?

A. Before we went to the store. We sat there for a minute and we heard sirens, so we left.

Q. What were you doing sitting there?

A. I don't know. You know, I think we did turn around at Butler's. I was coming out of the house and heard the crash. A few minutes later we left and rode by real slow, we turned around at Butler's and came back, we still didn't see anybody. We turned around and sat at the end of the road. We heard the sirens and left so we didn't get stuck in traffic.

* * *

Q. How long after you heard the crash before you saw the first car?

A. There was nobody at the time. I looked when I heard the crash, but I didn't see anything. You can't see through the trees; I wasn't going to walk down there.

Q. (Capt Freeman) Tell me again what happened?

A. I heard a crash, but couldn't see through the trees, I went in front of the trailer and looked. 10 to 15 minutes later Rodger came out and we went to the store.

* * *